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HOUSE BILL 1181

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

J. PAUL TAYLOR

AN ACT

RELATING TO MUNICIPALITIES; AUTHORIZING CONDEMNATION OF ELECTRIC FACILITIES; AMENDING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 3-23-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-22-3, as amended) is amended to read:

"3-23-3. MUNICIPAL UTILITY--APPROVAL OF NEW MEXICO PUBLIC UTILITY COMMISSION. --

A. If the acquisition of a utility is to be financed from funds received from the issuance and sale of revenue bonds, the price of the acquisition of the utility shall be approved by the New Mexico public utility commission and the commission shall require:

- (1) a determination by appraisal or otherwise

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1 of the true value of the utility to be purchased; or

2 (2) an engineer's estimate of the cost of the
3 utility to be constructed.

4 B. No revenue bonds shall be issued for the
5 acquisition of such a utility until the New Mexico public
6 utility commission has approved the issue and its amount, date
7 of issuance, maturity, rate of interest and general provisions.

8 C. The provisions of Subsections A and B of this
9 section shall not apply to the condemnation by a municipality
10 having a population of twenty-five thousand or more persons
11 according to the 1990 federal decennial census of ~~[either]~~
12 electricity facilities as authorized by Chapter 3, Article 24
13 NMSA 1978, sewer facilities as authorized by Chapter 3, Article
14 26 NMSA 1978 or water facilities as authorized by Chapter 3,
15 Article 27 NMSA 1978. "

16 Section 2. Section 3-24-1 NMSA 1978 (being Laws 1965,
17 Chapter 300, Section 14-23-1, as amended) is amended to read:

18 "3-24-1. ELECTRIC UTILITY--~~MUNICIPALITY MAY ACQUIRE AND~~
19 OPERATE-- CERTAIN MUNICIPALITIES MAY ACQUIRE BY CONTRACT OR
20 CONDEMNATION. --

21 A. Any municipality may, by ordinance, acquire,
22 operate and maintain an electric utility for the generation and
23 distribution of electricity to persons residing within its
24 service area. The service area of a municipality includes:

25 (1) territory within the municipality;

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1 (2) territory within five miles of the boundary
2 of the municipality in the case of any municipality heretofore
3 acquiring or operating any municipal electric utility or part
4 thereof in the territory within five miles of the boundary of
5 the municipality;

6 (3) the sale of electricity to the United
7 States government, the state of New Mexico or any department or
8 agency of these governments; and

9 (4) as further provided in Section 3-24-8 NMSA
10 1978.

11 B. No municipality may sell electric power and
12 energy on a retail basis except as provided in Subsection A of
13 this section.

14 C. The acquisition of any electric utility facility
15 beyond the municipal boundary shall be financed only by the sale
16 of revenue bonds.

17 D. Any municipality that owns a generating facility
18 or an interest in a jointly owned generating facility may sell
19 surplus electric power and energy on a wholesale basis either
20 within or outside its service area. Any contract or agreement
21 to sell surplus electric power and energy may be entered into on
22 a public bid basis, a competitive basis or a negotiated basis,
23 as the municipality may determine; provided, however, that
24 subject to the sale or other interchange of power and energy
25 with a joint participant or a co-member of a power pool

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1 necessary or convenient to the economical operation of a
2 generating facility or a jointly owned generating facility or
3 contractual requirements of a power pool in which the
4 municipality is a member, such surplus electric power and energy
5 shall be subject to a preference right to purchase by:

6 (1) first, municipalities that own electric
7 facilities on July 1, 1979;

8 (2) second, public electric utilities,
9 investor-owned utilities and electric cooperatives subject to
10 general or limited regulation by the New Mexico public utility
11 commission and the United States of America or any of its
12 departments or agencies; and

13 (3) any other person or entity.

14 E. Municipalities located within a class A county
15 and having a population of more than sixty thousand, but less
16 than one hundred thousand according to the 1990 federal
17 decennial census, may acquire, maintain, contract for and
18 condemn for use as a municipal utility privately owned electric
19 facilities used or to be used for the furnishing and supply of
20 electricity to the municipality or inhabitants within its
21 service area. The service area of a municipality authorized to
22 acquire, maintain, contract for or condemn private facilities
23 pursuant to this subsection includes customers located in:

24 (1) territory within the municipality;

25 (2) territory within five miles of the boundary

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1 of the municipality in the case of any municipality heretofore
2 acquiring or operating any municipal electric utility or part
3 thereof in the territory within five miles of the boundary of
4 the municipality:

5 (3) the sale of electricity to the United
6 States government, the state or any department or agency of
7 these governments; and

8 (4) as further provided in Section 3-24-8 NMSA
9 1978.

10 F. Condemnation authorized in this section shall be
11 conducted in the manner of proceedings provided by the Eminent
12 Domain Code. "

13 Section 3. Section 42A-3-1 NMSA 1978 (being Laws 1981,
14 Chapter 125, Section 33) is amended to read:

15 "42A-3-1. STATE, COUNTY, MUNICIPALITY OR SCHOOL DISTRICT--
16 APPROPRIATION OF PROPERTY--NATURE OF INTEREST. --

17 A. Property may also be condemned by the state, any
18 county, municipality or school district for the public use of
19 the state, county, municipality or school district for:

20 (1) public buildings and grounds;

21 (2) canals, aqueducts, reservoirs, tunnels,
22 flumes, ditches, conduits for conducting or storing water for
23 drainage, the raising of banks of streams and the removing of
24 obstructions;

25 (3) roads, streets, alleys and thoroughfares;

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- 1 (4) public parks and playgrounds;
2 (5) ferries, bridges, electric railroads or
3 other thoroughfares or passways for vehicles;
4 (6) canals, ditches, flumes, aqueducts and
5 conduits for irrigation;
6 (7) electric lines;
7 (8) electric utility plants, properties and
8 facilities consistent with the authority granted in Chapter 3,
9 Article 24 NMSA 1978;

10 [~~(8)~~] (9) the production of sand, gravel,
11 caliche and rock used or needed for building, surfacing or
12 maintaining streets, alleys, highways or other public grounds or
13 thoroughfares; and

14 [~~(9)~~] 10 public airports or landing fields
15 incident to the operation of aircraft.

16 B. No land shall be condemned for the production of
17 sand, gravel, caliche or rock [~~which~~] that is in the possession
18 or ownership of a person, firm or corporation engaged at the
19 time the proceeding is brought in the actual production of such
20 material from such land sought to be condemned. Nor shall any
21 land be condemned for municipal purposes [~~which~~] that may be
22 shown by the owner or lessee to have a content of precious metal
23 sufficient to produce the mineral in paying quantities.

24 C. Unless the petition to condemn specifically
25 provides for a transfer of less than the fee, all real property

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1 acquired pursuant to this section shall be acquired and held in
2 fee simple absolute."

3 Section 4. EMERGENCY.--It is necessary for the public
4 peace, health and safety that this act take effect immediately.

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 1, 1997

Mr. Speaker:

Your GOVERNMENT AND URBAN AFFAIRS COMMITTEE, to
whom has been referred

HOUSE BILL 1181

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 5, line 5, strike "the sale of electricity to
the".

2. On page 5, line 6, after "government" insert "- owner
installations".,

and thence referred to the JUDICIARY COMMITTEE.

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Respectfully submitted,

Lynda M. Lovejoy, Chairwoman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Pederson, Saavedra

Absent: None

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 7, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 1181, as amended

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. Strike House Government and Urban Affairs Committee
Amendment 2.

2. On page 5, line 6, after "government" insert "- owned
installations".

Respectfully submitted,

Thomas P. Foy, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 1181, a

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 11 For 1 Against

Yes: 11

No: Alwin

Excused: Ri os

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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March 14, 1997

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10 Mr. President:

11

Your JUDICIARY COMMITTEE, to whom has been referred

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HOUSE BILL 1181

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has had it under consideration and reports same with

16

recommendation that it DO PASS, and thence referred to the

17

FINANCE COMMITTEE.

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Respectfully submitted,

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Fernando R. Macias, Chairman

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25

Adopted _____ Not Adopted _____

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1 HJC/HB 1181, a

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(Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 5 For 1 Against

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Yes: 5

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No: Payne

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Excused: Sanchez, Vernon

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Absent: None

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FORTY-THIRD LEGISLATURE

FIRST SESSION

March 18, 1997

SENATE FLOOR AMENDMENT number _____ to HOUSE BILL 1181, as amended

Amendment sponsored by Senator Leonard Lee Rawson

1. On page 5, between lines 9 and 10, insert the following new subsection:

"F. A municipality that acquires, maintains, contracts for or condemns privately owned electric facilities for use as a municipal utility pursuant to the provisions of Subsection E of this section shall:

(1) not use revenues earned from the electric facilities for any purposes other than those directly related to the furnishing and supply of electricity to the municipality or inhabitants within the service area;

(2) not restrict use of the electric facilities or

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FIRST SESSION

SFI/HB 1181, aa

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distribution system to any person authorized to use the facilities
or distribution system pursuant to state law; and

(3) adopt a shared payment policy for line
extensions, with public input, that is fair and equitable,
requiring reasonable contributions from the persons who will
directly benefit from the line extension and not imposing an
unreasonable burden on the municipality or inhabitants within the
service area that do not directly benefit from the line
extension. "

2. Reletter the succeeding subsection accordingly and adjust
cross-references to correspond with these amendments.

Leonard Lee Rawson

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FORTY-THIRD LEGISLATURE
FIRST SESSION

SF1/HB 1181, aa

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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